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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE MARRIAGE OF MURRAY FRANKLIN JACKS, Appellant-Respondent, vs. MARLA D. JACKS n/k/a MARLA D. VALENTA, Appellee-Petitioner.	)))))))))))	No. 91A02-0607-CV-603

APPEAL FROM THE WHITE CIRCUIT COURT
The Honorable Robert W. Thacker, Judge
Cause No. 91C01-9906-DR-92

April 24, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Murray Franklin Jacks ("Frank") appeals the order of the White Circuit Court ("Indiana court") that, among other things, determined he owed a child support arrearage to his former wife, Marla D. (Jacks) Valenta ("Marla"). Frank raises six issues, which we consolidate and restate as:

I. Whether the Indiana court was required to give full faith and credit to a Georgia court's prior support order.

II. Whether the Indiana court erroneously modified child support to a date prior to the date of Marla's petition for modification.

III. Whether Frank and Marla's Georgia divorce decree, which incorporated the parties' settlement agreement that provided that Frank must pay thirty percent of his gross annual income in child support, violates Indiana public policy.

IV. Whether Frank established that the Indiana court's arrearage payment plan is unreasonable.

V. Whether the Indiana court erred when it calculated Frank's child support arrearage.

We affirm in part, reverse in part, and remand with instructions.

FACTS AND PROCEDURAL HISTORY

The Superior Court of Cobb County, Georgia ("Georgia court") dissolved Frank and Marla's marriage in February 1996. They are the parents of three daughters, who at the time of the dissolution were minors.[1] In August 1995, before the divorce was final, Marla moved with the three girls to White County, Indiana, where the four of them have resided since the move. Frank remained in Georgia and continues to reside there.

[1] The parties' oldest daughter, A.J., turned eighteen years of age on October 29, 2003.

At the time of their divorce, Frank and Marla entered into a court-approved settlement agreement ("Agreement"), under which Frank would pay Marla child support in an amount equal to thirty percent of his gross income, but not less than $550.00 per month.[2] In the Agreement, Frank agreed to annually provide Marla with proof of his gross annual income, and agreed to increase his child support commensurate with his income, so that his child support obligation for the three children remained at thirty percent of his gross income. *Appellant's App*. at 35.

Frank provided the income information to Marla in 1996, but failed to do so thereafter. In June 1999, Marla filed a petition in the Indiana Court to register the out-of-state decree, to modify child support, and to assert that Frank was in contempt of the Agreement. Marla was not able to obtain personal service on Frank until July 23, 2004, approximately five years after she filed her petition. During the interim years, although Frank continued to pay child support, he did not provide the required documentation of his annual income to Marla, and she believed that he was underpaying child support.

In July 2003, Marla contacted the White County Title IV-D Office (Indiana IV-D Office), seeking to obtain assistance in modifying child support and addressing what she believed to be an accruing arrearage. The Indiana IV-D Office contacted the Cobb County, Georgia UIFSA Child Support Enforcement Division (Georgia IV-D Office) about the matter. On September 5, 2003, Marla received an Agency Recommendation from the Georgia IV-D Office, which recommended a child support payment of $603.95 per child per

[2] According to the parties' divorce decree, the thirty percent reflected the percentage owed for three children, but that percentage reduced as the number of children for whom he owed support reduced.

month beginning July 1, 2004. The Agency Recommendation showed a child support arrearage of zero dollars as of August 1, 2003. The Indiana IV-D Office advised Marla that she could address the arrearage issue at a later date.

On December 16, 2003, the Georgia IV-D Office filed a petition in the Georgia Court to adopt the Agency Recommendation. Shortly thereafter, on December 24, Marla filed an Affidavit and Objection, in which she agreed to the recommended child support obligation, but expressly objected to the arrearage amount as proposed by the Georgia IV-D Office's petition. Specifically, Marla asked that "the issue of child support arrearage be acknowledged," and further requested that "the Court reserve[] a determination of child support arrearage at this time." *Appellee's App*. at 15. In April 2004, the Georgia IV-D Office sent a letter to the Indiana IV-D Office, stating that the issue of arrearage for the past five years was "open for [Marla] to issue through a private attorney." *Id*. at 20.

Without holding a hearing or receiving any evidence, the Georgia Court issued a Final Order on May 28, 2004 ("May 2004 Order"), determining that child support should be increased to "$603.95 per CHILD per MONTH" and that past due support was owed in the amount of "$0.00" as of August 1, 2003. *Id*. at 88. Although Marla had filed an objection to the Agency Recommendation, the May 2004 Order erroneously stated that there had been no objections filed.

On March 31, 2005, the Georgia IV-D Office filed a Petition to Amend the Georgia Court's May 2004 Order, asking that the Georgia court determine the arrearage, based on the thirty percent formula, and order a repayment schedule. On July 1, 2005, the Georgia court

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Appellant's App. at 25.

issued an order ("July 2005 Order") in which it declined to hear the Petition to Amend and expressly deferred the arrearage issue to Indiana, stating:

> *The issue regarding the arrearage amount* based on the [Agreement's] language "Husband agrees to provide sufficient information to Wife each year in order to allow her to determine Husband's gross annual income each year, and agrees to increase the base amount of child support by 30% of any gross increase in his income" *is best decided in Indiana*.

Appellant's App. at 124 (emphasis added).

On September 5, 2005, Frank filed in the Georgia court a petition for contempt, primarily concerning matters of visitation. On September 26, 2005, the Indiana court entered an order registering the parties' Georgia divorce decree in Indiana, pursuant to Marla's request, and determining that both Indiana and Georgia have "simultaneous jurisdiction" over matters pertaining to the decree. *Appellee's App*. at 39. After an October 2005 telephone conference between the Georgia and Indiana trial judges, the Georgia court issued an order in October 2005 transferring Frank's contempt petition to the Indiana court, stating, "As the arrearage issue will be decided in the [Indiana Court], the interests of judicial economy will be best served by resolution of this dispute in the [Indiana Court]." *Id*. at 43.

On March 22, 2006, the Indiana court held a hearing on pending matters, namely Marla's petition to modify support and her contempt citation on the arrearage issue, and Frank's petition for contempt on visitation matters. After the parties filed proposed findings of fact and conclusions thereon, the Indiana court entered its Final Judgment and Order on June 19, 2006 ("Indiana Final Judgment and Order"). In it, the court determined that Frank was in contempt of the Georgia decree and support order for failing to provide Marla with income information and for failing to pay thirty percent of his gross annual income according

the terms of the Agreement. The trial court ordered that semi-monthly payments of $603.95, which Frank had been paying since at least September 2004, were reasonable and would continue until further order of the court. *Appellant's App*. at 11. The court also determined that Frank was in arrears in the amount of $33,463.30 and ordered him to pay $5,000.00 every six months through January 1, 2009, with the last payment of $3,463.30 due July 1, 2009. Frank now appeals.

DISCUSSION AND DECISION

The trial court here entered findings of fact and conclusions thereon. When a trial court enters such findings, we must determine whether the evidence supports the findings and whether the findings support the judgment. *Gardner v. Pierce*, 838 N.E.2d 546, 549 (Ind. Ct. App. 2005). The court's findings and conclusions will be set aside only if they are clearly erroneous, that is, if the record contains no facts or inferences supporting them. *Id*. A judgment is clearly erroneous when a review of the record leaves us with the firm conviction that a mistake has been made. *Id*. We neither reweigh the evidence nor assess the credibility of witnesses but consider only the evidence most favorable to the judgment. *Id*.

I. Full Faith and Credit and Res Judicata

The Georgia court's May 2004 Order adopted the Agency Recommendation and stated that a "$0.00" arrearage existed. *Appellant's App*. at 48-49. Approximately two years later, in June 2006, the Indiana court issued its Final Judgment and Order, which determined, among other things, that Frank had an outstanding child support arrearage of over $33,000.00. Frank argues that the Indiana court erred when it issued an order finding an

existing arrearage because Georgia's May 2004 Order was entitled to receive full faith and credit, and the arrearage issue was foreclosed to the Indiana court by res judicata.

When determining whether a judgment issued by the court of a sister state is binding upon Indiana courts under the doctrine of res judicata, our inquiry is twofold. *Gardner*, 838 N.E.2d at 550. First, we ask whether Indiana courts are required to give full faith and credit to the foreign judgment. *Id*. If so, then we ask whether that judgment bars future litigation of the matter in that foreign jurisdiction. *Id*.

A judgment from a sister state that is domesticated in an Indiana court will be given full faith and credit. *Johnson v. Johnson*, 849 N.E.2d 1176, 1178 (Ind. Ct. App. 2006) (citing *Mahl v. Aaron*, 809 N.E.2d 953, 959 (Ind. Ct. App. 2004)). Full faith and credit means that "the judgment of a state court should have the same credit, validity, and effect, in every other court of the United States, which it had in the state where it was pronounced." *Id*. Indiana has codified this principle at IC 34-39-4-3, which provides that records and judicial proceedings from courts in other states "shall have full faith and credit given to them in any court in Indiana as by law or usage they have in the courts in which they originated." *Gardner*, 838 N.E.2d at 550. In order to be entitled to recognition and enforcement under the full faith and credit clause, the judgment must be a final judgment adjudicating the litigation in a conclusive and definitive manner. *Lee v. DeShaney*, 457 N.E.2d 604, 607 (Ind. Ct. App. 1983); *see also Gamas-Castellanos v. Gamas*, 803 N.E.2d 665, 666 (Ind. 2004) ("[B]ecause the issue was conclusively litigated in Louisiana with both sides fully participating, the decision of the Louisiana court system is entitled to full faith and credit in Indiana.").

Here, the parties present us with their respective arguments as to whether the May

2004 Order, which was in large part a fill-in-the-blank type of order, and which was issued without a hearing, satisfied the full faith and credit requirement that the matter was adjudicated in a conclusive and definitive manner. However, we are not required to make that analysis because the Georgia court's subsequent rulings are dispositive.

In its June 2006 Final Judgment and Order, the Indiana court found that the arrearage issue was not barred by res judicata because the May 2004 Order "made no determination" on the arrearage issue. *Appellant's App*. at 9. We must disagree with the Indiana court on this matter. The Georgia court's May 2004 Order stated that no arrearage existed as of August 1, 2003; this finding of no arrearage does, in fact, constitute a determination, and we believe that the May 2004 Order was, when issued, entitled to full faith and credit. However, under the facts of this case, the analysis does not end there.

Frank argues that by finding that an arrearage existed in the June 2006 Final Judgment and Order, the Indiana court ignored the Georgia court's May 2004 Order. It did not. By that point in time, the Georgia court had, on more than one occasion, expressly deferred the matter of any child support arrearage to Indiana. The Georgia court first did so in its July 2005 Order, when it declined to hear the Georgia Title IV-D Office's Petition to Amend the Final Order, stating, "The issue regarding the arrearage amount . . . is best decided in Indiana." *Id*. at 124. Later, in October 2005, the Georgia court issued an order in response to Frank's petition for contempt regarding visitation issues, stating that, because "the arrearage issue will be decided in the [Indiana court]," Frank's contempt petition should likewise be decided in Indiana in "the interests of judicial economy." *Appellee's App*. at 43. We hold that these orders issued by the Georgia court, and most particularly the July 2005 Order,

effectively set aside any arrearage determination that could be construed to have been made in the May 2004 Order. Thus, although the May 2004 Order originally may have been entitled to full faith and credit by the Indiana court, the Georgia court's subsequent orders alleviated any such constraint on the Indiana court's authority to decide the issue.

II. Modification

Having not received the annually-required income information from Frank and believing that Frank was underpaying support, Marla filed her petition for contempt and for modification in June 1999. Some five years later, she successfully obtained service on Frank. In March 2006, the Indiana court heard the petition, and, in June 2006, it issued its Final Judgment and Order. Relying on the well-settled principle that one cannot modify child support to a date prior to the filing of the petition for modification,[3] Frank argues on appeal that the Indiana's Final Judgment and Order erroneously modified child support to a date prior to Marla's original petition for modification. It did not.

At no time has the Indiana court modified child support in this case; rather, it has only enforced the provisions of the parties' decree and Agreement, which in September 2005 were properly registered in Indiana. The Agreement provided that Frank agreed to pay thirty percent of his annual gross income for child support, in an amount not less than $550.00 per month. In its May 2004 Order, the Georgia court determined that, based on Frank's income, he was obligated to pay $603.95 per child per month in support. Indiana's Final Judgment and Order merely enforced that obligation, by requiring Frank to make semi-monthly

[3] *See* IC 31-16-16-6; *Drwecki v. Drwecki*, 782 N.E.2d 440, 447-48 (Ind. Ct. App. 2003).

payments of $603.95 for the support of his remaining two minor children.[4]

III. Public Policy

Frank asserts that it was improper for the Indiana court to enforce Georgia's child support determination, which was based on the Agreement that Frank would pay child support in an amount equal to thirty percent of his annual gross income, because using a percentage formula for determining child support violates Indiana public policy. He argues that Georgia's determination, unlike Indiana's approach to determining child support, was based solely upon the gross wages of the non-custodial parent,[5] makes no provision for the needs of the children, does not employ the shared expense approach, and allows modification even if the modification results in less than a twenty percent change in support.[6] We reject Frank's claim for several reasons.

First, we note that Frank may have waived any challenge to the monthly child support amount because, according to Indiana's June 2006 Final Judgment and Order, Frank agreed to it. The Order states, "The parties stipulate to and this Court recognizes the current support order entered by [the Georgia court] on May 28, 2004, and finds that semi-monthly support payments of $603.95 are reasonable under the Indiana Child Support Guidelines[.]"

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[4] As previously mentioned, A.J., turned eighteen in October 2003, and the effect of her emancipation on Frank's child support obligation is discussed in further detail in Section IV.

[5] We note that the Georgia court's May 2004 order includes Marla's gross monthly income. *Appellant's App*. at 46. Whether the court considered her income in determining Frank's obligation is not clear.

[6] Frank's latter assertion refers to Indiana's requirement that a petitioner seeking a modification of child support must establish either a substantial and continuing change in circumstances or a twenty percent variation from the guideline amount. IC 31-16-8-1.

Appellant's App. at 11; *see also id*. at 14 ("The parties stipulate and agree . . . Murray Franklin Jacks should and shall pay child support in the amount of $603.95 semi-monthly to the Former Wife, Marla D. Jacks[.]"). Having agreed and stipulated to the child support obligation, Frank cannot now claim error on the part of the Indiana court for enforcing it. *Ellis v. State*, 707 N.E.2d 797, 803 (Ind. 1999) (where defendant stipulated to evidence and later challenged it, court held that invited error is not reversible error).

Second, even if Frank did not waive his claim, there is no public policy violation. IC 31-18-6-4 concerns choice of law matters after a support order of another state is registered in Indiana. That statute provides that the law of the issuing state, here Georgia, governs the "nature, extent, amount and duration of current payments and other obligations of support[.]" GA. CODE ANN. § 19-6-15, as amended effective January 1, 2007, sets forth guidelines for determining a rebuttable presumption of minimum child support and, like Indiana, considers the gross income of both parents. However, prior to January 1, 2007, that statute provided that the child support obligation was calculated by multiplying the obligor's gross income by a percentage based on the number of children. *See* GA. CODE ANN. § 19-6-15(b)(5) (2004) (twenty-five to thirty-two percent of gross income for three children). Further, Georgia law does not prohibit parties from entering into negotiated agreements specifying the amount of child support and containing provisions for the automatic adjustment of support in accordance with fluctuations in the obligor's income. *Newsome v. Newsome*, 227 S.E.2d 347, 348 (Ga. 1976).

Even if Georgia law were not controlling, the $603.95 semi-monthly child support determination, based on a percentage of Frank's income, is not void in Indiana. In *Cochran*

v. Rodenbarger, 736 N.E.2d 1279 (Ind. Ct. App. 2000), this court examined the propriety of an agreed-upon child support arrangement under which the noncustodial parent, the mother, would pay child support in an amount equal to sixteen percent of her gross monthly wages, after she became employed on a full-time basis. After noting that such a provision was unlikely to be approved by a court following the adoption of Indiana's child support guidelines, the *Cochran* court held that the self-adjusting support provision based only on the noncustodial parent's income, which was agreed to by the parties in 1989, was not invalid as against public policy. *Id*. at 1282. Frank asks us to "revisit" that ruling; however, we decline to do so and find no public policy violation with the Indiana court's ruling regarding Frank's child support obligation.

IV. Arrearage Payment Plan

After finding that Frank had accrued an arrearage exceeding $33,000.00 over the course of eight years, the Indiana court ordered Frank to pay Marla $5,000.00 every six months, beginning in August 2006. Frank argues that this plan, which is in addition to the requirement that he pay $603.95 per child per month, is "simply too much" and asks us to modify it "to something more reasonable." *Appellant's Br*. at 26.

We will reverse a trial court's decision in child support matters only for an abuse of discretion. *See Smith v. Smith*, 793 N.E.2d 282, 284 (Ind. Ct. App. 2003) (decisions regarding child support, including whether nonconforming child support payments should be applied to father's arrearage, are reviewed for abuse of discretion); *see also In re the Paternity of G.R.G.*, 829 N.E.2d 114, 120 (Ind. Ct. App. 2005) (trial court did not abuse its discretion in ordering father to pay additional weekly support until he extinguished arrearage

that accumulated after mother filed her petition).

Frank argues that there was no evidence presented to support his ability to make such payments. According to the record before us, Frank provided his W-2 wage information to the Indiana court for the years 1996 to 2005; however, beyond that, neither party presented any evidence regarding his or her financial information or expenses. Marla responds that, were she to proceed to collect on the judgment via statutory garnishment proceedings, she could attach approximately the same amount as that which the Indiana court ordered Frank to pay. Thus, she maintains, the amount ordered by the court was reasonable.

Although we decline to comment on whether the Indiana court's order was the most reasonable option available, we conclude that Frank has not established that the court abused its discretion.[7]

V. Calculation of Arrearage

Frank argues that the Indiana court erred in its calculation of his arrearage because it failed to consider that the parties' oldest daughter was emancipated in 2003, and he no longer should have been required to pay support for her since that time. We agree.

The provisions of the parties' dissolution decree state that child support shall

> continue until the child(ren) become [sic] 18 years of age, dies, marries or otherwise becomes emancipated, except that if the child(ren) become [sic] 18 years of age while enrolled in and attending secondary school on a full-time basis, then such support shall continue until the child(ren) complete [sic] secondary school[.]

[7] Should Frank desire to present evidence on the issue, he is free to petition the Indiana court for a hearing.

Appellant's App. at 17.[8] A.J. turned eighteen in October 2003, and Frank's obligation to support her should have ended at that time.

We observe that although the issue of child support was before the Georgia court approximately six months later, in May 2004, it does not appear from the record before us that A.J.'s emancipation was addressed at that time. In its May 2004 Order, the Georgia court ordered that Frank's child support obligation was "$603.95 per CHILD, per MONTH," effective beginning July 1, 2004, but it does not expressly state for which or how many of Frank's children he owed support. *Appellant's App*. at 48-51. However, the terms of the May 2004 Order expressly adopt the Agency Recommendation, which, in turn, listed the names of all three daughters and stated Frank was responsible for paying support for those three children. *Id*. at 46-47. The Georgia court's incorporation of the Agency Recommendation suggests to us that the Georgia court intended for Frank to pay support for all three daughters, i.e., $1,841.85 per month ($603.95 x 3). If so, we find this to be in error, as A.J. had turned eighteen approximately six months prior.

Frank argues, "The appealed Indiana order continued to assess child support as if there were three children[.]" *Appellant's Br*. at 27; *Reply Br*. at 10. We disagree. Indiana's Final Judgment and Order repeatedly speaks in terms of a "semi-monthly" payment of $603.95 per month. *Appellant's App*. at 6, 11, 14. From this, we infer that the Indiana court recognized

[8] We note that, according to Frank, *Appellant's Br*. at 27, A.J. graduated from high school in May 2003, and the parties' Agreement provides that child support shall continue until the children die, marry, graduate from high school, or reach the age of eighteen years, *whichever shall first occur*. *Appellant's App*. at 35 (emphasis added). However, Frank does not argue that support for A.J. should have ended in May 2003. His position is that support should have ended when A.J. turned eighteen on October 29, 2003. We agree and proceed with our arrearage analysis based on the October 2003 emancipation date.

A.J.'s emancipation, such that Frank owed support only for the two minor children. Indeed, according to comments made during a discussion between the court and the parties' attorneys at the March 2006 hearing, it appears that counsel for Frank and Marla agreed that, because A.J. was eighteen years old and not enrolled in school, support for her was not required.[9] *Tr*. at 81.

The Indiana court's June 2006 arrearage calculation was based on the premise that the semi-monthly payments of $603.95 began in July 2004, which is when Georgia's May 2004 Order directed that the new payment obligation would become effective. We hold today that the semi-monthly payments of $603.95 should have begun in November 2003, as A.J. turned eighteen years old on October 29 of that year. Although this effectively reduces the percentage of Frank's gross income paid toward child support from thirty percent to approximately twenty percent, that reduction is in accordance with the terms of the parties' decree. *Appellant's App*. at 25. To the extent that Indiana's June 2006 arrearage assessment includes child support for A.J. after her eighteenth birthday, it is in error.[10]

We direct the Indiana trial court to amend its June 2006 order and reduce the arrearage determination as necessary to reflect that Frank did not owe child support for A.J. after she

[9] It appears that Frank had been making semi-monthly payments of $603.95 since September 2004. *Tr*. at 41; *see also Appellant's App*. at 6 (Indiana court's Final Judgment and Order indicates that Frank paid $4,831.60 in the last four months of 2004; this equates to eight payments of $603.95, or $603.95 twice per month).

[10] In 2004, Frank paid $14,210.55 in child support. *Appellant's App*. at 5-6. In its June 2006 order, the Indiana court determined that Frank owed $18,875.85 for 2004, which sum was comprised of six months of child support using the thirty percent formula (January through June), and six months at the semi-monthly payments of $603.95 (July through December). *Id*. The Indiana court thus found that, for the year 2004, Frank was in arrears in the amount of $4,665.30 ($18,875.85 less $14,210.55). Under our holding, where Frank's support obligation for A.J. ended in October 2003, Frank owed $14,494.80 for 2004 ($603.95 per minor child per month, or $1,207.90 per month). Thus, his arrearage for 2004 should have been only $284.25 ($14,949.80 less $14,210.55).

turned eighteen in October 2003.

Affirmed in part, reversed in part, and remanded with instructions.

RILEY, J., and FRIEDLANDER, J., concur.